IN THE MATTER OF	:	BEFORE THE
MICHAEL & CAROLE McSHANE	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 06-038V

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DECISION AND ORDER

On November 6, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Michael A. and Carole W. McShane, Petitioners, for a variance to reduce the 30-foot rear setback to 12 feet for a screened porch to be located in an R-20 (Residential – Single) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were not represented by counsel. Carole McShane testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 4034 Dado Court, is located in the 2nd Election District on the south side of the terminus of Dado Court, east of MacAlpine Road in the Dunloggin Section

8 subdivision in Ellicott City (the "Property"). The Property is identified on Tax Map 24, Grid 17 as Parcel 951, Lot 85.

The Property is a roughly trapezoidal in shape, but the northern boundary is concave due to the curve in the cul-de-sac of Dado Court. The lot consists of about 21,170 square feet, or 0.486 acres. The lot has about 143.74 feet of frontage on Dado Court. The Property is 140 feet deep on its west side and 126.97 feet deep on its west side. The center of the lot narrows to about 120 feet. The lot is 180.18 feet wide along the rear lot line.

The Property is improved with a two-story residential dwelling that faces Dado Court and is located 55 feet from the road frontage, 40 feet from the west side lot line, 22 feet from the rear lot line, and 50 feet from the east side lot line. The house is about 28 feet deep and 60 feet wide with an attached two-car garage on its west side. A 12' by 12' deck is attached to the southeast portion of the rear of the home.[1]

The house is accessed from a paved driveway from Dado Court leading to the garage. The lot slopes down from the east to the west with a medium grade hill in the southern portion. The rear yard of the Property contains mature evergreen and deciduous trees and a 10' high hedge.

2. The Petitioners, the owners of the Property, propose to remove the existing deck and construct a 12' deep and 16' wide screened porch in its place. The screened porch will have vinyl siding and fiberglass roof shingles to match the existing material of the house. The

[1] This deck currently encroaches into the 30-foot rear setback, but may be a legally existing "noncomplying structure" if it was built before the rear setback restriction was imposed.

southeast corner of the porch will therefore be located 12 feet from the rear lot line and encroach 18 feet into the 30-foot rear setback required by Section 108.D.4.c(1)(c)(i).

3. Vicinal properties are also zoned R-20 and are part of the Dunloggin Section 8 subdivision. The subdivision plat identified by the Petitioners (Exhibit 1) indicates that the Property is shallower than all but one other property in the subdivision. The size of the Petitioner's home is typical of many in the neighborhood. Many other homes in the neighborhood have decks and/or screened porches.

4. Mrs. McShane testified that the home was built in 1964 and that she and her husband purchased the Property in 1989. The deck was in its present location when they bought the house. She stated that the topography of the lot at the southwest portion of the house lot is lower than the proposed location such that the porch would be inordinately high off the ground if built there. She stated that she will add landscaping to the rear of the Property in order to buffer the view of the screened porch from vicinal properties.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

> (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find that the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

The Property is shallower than most other properties in the neighborhood. With the screened addition, the home will remain of relatively modest size. In order to construct the porch, however, due to the shallowness of the buildable area of the lot, it is necessary to encroach into the rear setback. Consequently, I find that the shallowness of the Property is a unique physical condition that causes the Petitioners practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The screened porch will be used for permitted residential purposes and will not change the nature or intensity of the use. The porch will replace an existing deck. The rear yard of the Property contains mature evergreen and deciduous trees and a 10' high hedge which will serve to buffer the view of the porch from adjoining properties. In addition, the Petitioners will plant additional landscaping along the rear lot line. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the shallowness of the Property and was not created by the Petitioners, in accordance with Section 130.B.2.a(3).

4. The proposed 12' by 16' screened porch addition is the minimum depth feasible and will be located in the only area practical due to the slope of the southwestern portion of the Property. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this **4th day of December 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Michael A. and Carole W. McShane for a variance to reduce the 30-foot rear setback to 12 feet for a screened porch to be located in an R-20 (Residential – Single) Zoning District, is hereby **GRANTED**;

Provided, however, that the variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

_____
Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.

Lapse of Variance: This variance will become void unless the required permits conforming to the variance plan are obtained within two years and substantial construction in accordance therewith is completed within three years from the date hereof. If the variance is granted to allow recording of a final plat, the variance will become void unless the plat is recorded in the Land Records of Howard County within three years from the date hereof. See Section 130.B.2.e.